Supreme Court, U.S.
FILED
MAR 11 1993
OFFICE OF THE CLERK

No. 92-1416

IN THE

Supreme Court of the United States of America

OCTOBER TERM, 1992

HAL SPEARMAN CRAWFORD,

Petitioner,

vs.

THE LANDMARKS GROUP PROPERTIES CORP.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT W. WEBB, JR.
TROUTMAN SANDERS
5200 NationsBank Plaza
600 Peachtree Street, N.E.
Atlanta, Georgia 30308-2216
(404) 885-3000

Counsel of Record for Respondent The Landmarks Group Properties Corp.

March 10, 1993

TABLE OF CONTENTS

	PAGE NO.
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI	2
CONCLUSION	4

TABLE OF AUTHORITIES

	PAGE NO.
Allen v. Beneficial Finance Co. of Gary, Inc., 531 F.2d 797 (7th Cir. 1976), *cert. denied*, U.S. 885 (1976) . . .	3
Barrett v. Independent Order of Foresters, 625 F.2d 73 (5th Cir. 1980)	2
Cato v. Collins, 539 F.2d 656 (8th Cir. 1976)	3
Greg v. U.S. Industries, Inc., 715 F.2d 1522, reh'g granted, in part, clarified, 721 F.2d 345 (11th Cir. 1983), *cert. denied*, 466 U.S. 960 (1984)	2
Howard v. Atlantic Coast Line Railroad Co., 84 Ga. App. 307, 66 S.E.2d 87 (1951)	3
Oglesby v. Terminal Transport Co., Inc., 543 F.2d 1111 (5th Cir. 1976)	2
Porter Coatings v. Stein Steel & Supply Co., 247 Ga. 631, 278 S.E.2d 377 (1981)	3

STATEMENT OF THE CASE

The lawsuit from which this appeal is taken is the third lawsuit Petitioner has filed against Respondent alleging the same breaches of the same provision of the same contract. Petitioner voluntarily dismissed his first suit just two days before a hearing on Respondent's pending Motion for Summary Judgment. Soon after Petitioner's dismissal of his first suit, Respondent promptly and successfully moved for an award of attorneys' fees and costs pursuant to Georgia's attorneys' fees statute. In granting Respondent's Motion for Fees and Costs, the trial court in the first case found that Petitioner's lawsuit did not "exhibit a justiciable issue of law or fact and lacked substantial justification."

Approximately a year and a half after the dismissal of the first suit, Petitioner filed a second lawsuit. As in the first suit, Petitioner alleged a breach of the same provision of the same contract. Also as in the first suit, Petitioner voluntarily dismissed his second suit, this time under threat of an "abusive litigation" claim by Respondent.

Petitioner filed the same lawsuit yet a third time. The third suit terminated in Respondent's favor when the court granted Respondent's Motion for Summary Judgment as to each count in Petitioner's Complaint. The court's grant of summary judgment in Respondent's favor in the third suit is the basis of the instant appeal.

Respondent moved for summary judgment as to all counts in Petitioner's Complaint in the third suit and on September 5, 1991, after full briefing and oral argument, the trial court entered an Order granting Respondent's Motion for summary judgment in this case as to each count. With regard to the contractual provision at issue ("Paragraph 4"), the trial court found that the undisputed and admitted material facts showed that Respondent did not breach Paragraph 4. The trial court found, as a matter of law, that the language of Paragraph 4 of the Contract was plain and unambiguous and that it provided additional compensation to Petitioner **only if** during the relevant two-year period the property were **rezoned** to increase the square footage above the established density of square feet of office space per acre. The court determined that the undisputed evidence and *Petitioner's*

own deposition admissions demonstrated that the zoned density level of the subject property remained the same during the two-year period.

Contrary to Petitioner's allegations and as evidenced by the trial court's Order itself (a copy of which is annexed to Petitioner's Petition), the trial court fully considered the relevant evidence submitted by the parties and determined after consideration of that evidence that the undisputed material facts and Petitioner's own sworn deposition testimony entitled Respondent to judgment in its favor as a matter of law. The court's lengthy, well-reasoned, and thorough Order in the third case is not, on its face, as suggested by Petitioner, merely a "rubber stamp" approval of the trial court's previous Order in the first case.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

According to the questions presented and statutes implicated by Petitioner, the sole basis for his Petition to this Court is a challenge to the constitutionality of the entry of summary judgment against him. Specifically, Petitioner claims that the entry of summary judgment against him violated his constitutional rights to a civil jury trial under the Seventh Amendment and the Georgia Constitution, as well as his due process rights under the Fifth and Fourteenth Amendments.

Court's have uniformly and repeatedly rejected the very arguments presented by Petitioner. It is well-settled that the grant of summary judgment against a litigant does not violate that litigant's Seventh Amendment right to a jury trial. *Greg v. U.S. Industries, Inc.*, 715 F.2d 1522, reh'g granted, in part, clarified, 721 F2d 345 (11th Cir. 1983), *cert. denied*, 466 U.S. 960 (1984); *Barrett v. Independent Order of Foresters*, 625 F.2d 73 (5th Cir. 1980). Likewise, the grant of summary judgment does not violate a litigant's Fifth and Fourteenth Amendment rights. *Oglesby v. Terminal Transport Co., Inc.*, 543 F.2d 1111 (5th Cir. 1976). Finally, the entry by the court of a judgment against a

litigant as a matter of law (whether through directed verdict or summary judgment) does not violate that litigant's due process rights or rights to a jury trial under the Georgia Constitution. *Howard v. Atlantic Coast Line Railroad Co.*, 84 Ga. App. 307, 316, 66 S.E.2d 87 (1951); *see also, Porter Coatings v. Stein Steel & Supply Co.*, 247 Ga. 631, 278 S.E.2d 377 (1981). Accordingly, Petitioner's claims raise no legitimate basis for the review of the decision of the Georgia Supreme Court affirming the trial court's grant of summary judgment in Respondent's favor.

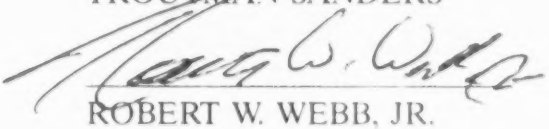
Finally, although Petitioner now contends that the grant of summary judgment against him by the trial court violated certain of his state and federal constitutional rights, he failed to raise as error any such violation of his constitutional rights in the proceedings below, a fact which is noticeably confirmed by the Petition which he has filed in this Court. Because he failed to raise any constitutional questions as enumerations of error in his appeals below, Petitioner struggles in his Petition before this Court to allege that his method of raising a federal question in the court below was the pro forma jury trial demand set forth in his Complaint. Since this routine demand was not included in a pleading that was submitted before Respondent's summary judgment motion was even filed, and since it was never mentioned in Petitioner's responses to Respondent's motion or in any of Petitioner's arguments to the trial court or the Georgia Supreme Court, it hardly can be cited as the method for raising a federal question in the proceedings below. Petitioner's failure to raise any constitutional challenges in the courts below serves to underline the frivolous nature of his current Petition, and provides yet a further basis for the denial of his Petition. *Cato v. Collins*, 539 F.2d 656 (8th Cir. 1976); *Allen v. Beneficial Finance Co. of Gary, Inc.*, 531 F.2d 797, *cert. denied*, 429 U.S. 885 (1976).

CONCLUSION

For the foregoing reasons, this Court should deny Petitioner's petition for Writ of Certiorari to the Supreme Court of Georgia. Additionally, given Petitioner's history of frivolous litigation against Respondent and the absence of merit in his Petition, Respondent respectfully requests that this Court assess costs against Petitioner and award damages to Respondent pursuant to this Court's Rules.

Respectfully submitted,

TROUTMAN SANDERS



ROBERT W. WEBB, JR.
Georgia Bar No. 744750

Counsel of Record for
Respondent
The Landmarks Group
Properties Corp.

5200 NationsBank Plaza
600 Peachtree Street, N.E.
Atlanta, Georgia 30308-2216
(404) 885-3000

Dated: March 10, 1993